Office of Chief Counsel Internal Revenue Service

memorandum

CC: LM: FSH: SL: MAN: TL-N-93-01

AHintermeister

date: January 23, 2001

to: Henry V. Singleton, Acting Territory Manager

Attn: Revenue Agent Dennis Whalen

from: Area Counsel

(Financial Services and Healthcare: Manhattan)

subject:

Request for Assistance

DISCLOSURE STATEMENT

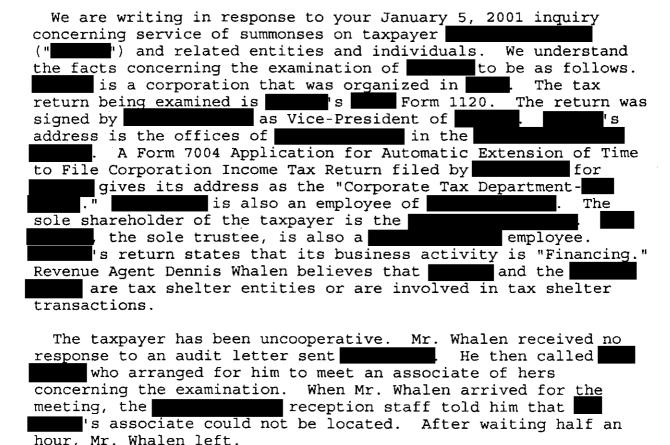
This advice may contain return information subject to I.R.C. § 6103. This advice may contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination, Appeals, or Counsel recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or Counsel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representative.

This advice is not binding on Examination of Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the Field Office with jurisdiction over the case.

<u>Analysis</u>

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will

inform you of the result of the review as soon as we hear from the office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.



Service of summonses on the taxpayer, the named employees involved, as well as the trust and through custodial witnesses is appropriate. Under I.R.C. § 7602(a), the IRS has the power to issue a summons to any person who has information that may be relevant to an IRS inquiry. This power may be invoked to require a person to produce books and records or to give testimony so that the IRS may:

- (1) assess the correctness of a return;
- (2) make a return where none has been made;
- (3) determine or collect the liability of any person for any internal revenue tax; or
- (4) inquire into an offense connected with the administration or enforcement of the tax laws.

There is no requirement that the government establish that it had probable cause to believe the taxpayer misstated tax liability. The IRS may use its summons power to obtain any information which may be relevant to its investigation. United States v. Powell, 379 U.S. 48 (1964). The IRS may obtain items of even potential relevance to an ongoing investigation. United States v. Arthur Young & Co., 465 U.S. 805 (1984). Nonetheless, a summons can be overbroad or burdensome and the material sought considered irrelevant.

Service of summonses on and its officers as well as on its shareholder and the trustee and is appropriate in this case given the taxpayer's failure to cooperate and the obvious link between the taxpayer, its officer, its shareholder and I may be that income or deductions reported on the taxpayer's return belong to the trust or to or another controlled entity or that the taxpayer has unreported income. It is irrelevant that the taxpayer's sole shareholder is a trust.

A summons will be enforced only if the IRS has followed the appropriate administrative steps in obtaining the summons. The Internal Revenue Code imposes some additional procedural requirements for summonses directed to third parties. These requirements apply to any summons other than one directed to or to as an officer of (or any other officers that become known during the examination).

Section 7602(c)(1) prohibits third party contacts "without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made."

Unless has already received such notification, it must be provided before serving any third party summonses. Section 7609(a)(1) requires that the Service notify the taxpayer of any summonses served on a third parties within three days of service but no later than 23 days before the day fixed in the summons for examination of records.

Based on the information you have provided concerning the examination, you should consider serving the following summonses:

- 1. through a custodial witness to get records
- 2. Vice-President of to get records and testimony
- 3. through a custodial witness to get records.

We are available to review draft summonses or otherwise assist you in preparing and serving summonses in this case. Please contact Anne Hintermeister, the attorney handling the case in our office, at 212-264-8021, ext. 312.

ROLAND BARRAL Area Counsel (Financial Services and Healthcare: Manhattan)

By:_____

PAULETTE SEGAL
Associate Area Counsel
(Strategic Litigation)